Held, that the criminal Statute of Limitations does not apply to contempt of court. *In re Gompers*, 39 Wash. L. R. 761 (D. C., Sup. Ct.). See NOTES, p. 375.

CONTRACTS — CONTRACTS UNDER SEAL — SUIT BY ONE NOT A PARTY TO CONTRACT. — The defendant agreed with the plaintiff's mother by a contract under seal to support her for life. On the defendant's failure to keep his agreement, the plaintiff was compelled to support his mother. *Held*, that the plaintiff cannot recover from the defendant on the contract. *Case* v. *Case*, 203 N. Y. 263, 96 N. E. 440.

The strict regard which the law has held for the form of instruments under seal has usually permitted only the parties themselves to such an instrument to enforce it. *Storer* v. *Gordon*, 3 M. & S. 308; *Chesterfield, etc. Colliery Co.* v. *Hawkins*, 3 H. & C. 677. A principal cannot enforce a contract under seal made for him by an agent unless clearly made in the principal's name. *Townsend* v. *Hubbard*, 4 Hill (N. Y.) 351. *Cf. Borcherling* v. *Katz*, 37 N. J. Eq. 150. In jurisdictions where importance is still attached to a seal, the beneficiary of a contract under seal made for the benefit of a third party cannot sue upon it. *Inhabitants of Farmington* v. *Hobert*, 74 Me. 416; *Cocks* v. *Varney*, 45 N. J. Eq. 72, 17 Atl. 108. Many jurisdictions, however, have been more liberal and have allowed the beneficiary of a contract under seal to sue thereon. *Coster* v. *Mayor, etc. of Albany*, 43 N. Y. 399; *Rogers* v. *Gosnell*, 51 Mo. 466. This is usually the case where the promisor's covenant is to assume a mortgage. *North Alabama Development Co.* v. *Orman*, 55 Fed. 18; *Central Trust Co.* v. *Berwind-White Coal Co.*, 95 Fed. 391. The plaintiff in the principal case should not be allowed to recover as a beneficiary, since apparently it was intended that he should only be incidentally benefited. *Durnherr* v. *Rau*, 135 N. Y. 219, 32 N. E. 49; *N. O. St. Joseph's Association* v. *Magnier*, 16 La. Ann. 338. But, it is submitted, the plaintiff had a quasi-contractual right of action for having discharged an obligation owed primarily by the defendant. *Rundell* v. *Bentley*, 53 Hun (N. Y.) 272, 6 N. Y. Supp. 609. See 24 HARV. L. REV. 583.

CONTRACTS — DEFENSES — INABILITY OF PLAINTIFF TO PERFORM — REPUDIATION ON INSUFFICIENT GROUND AS WAIVER OF GOOD EXCUSE. — A seller attempted to take advantage of the provision of an instalment contract giving the right of rescission in case of late payment. In a suit by the buyer, the jury found that this right was waived by repeatedly accepting overdue payments. *Held*, that the seller may not introduce evidence of the buyer's insolvency as a further excuse. *Honesdale Ice Co.* v. *Lake Lodore Improvement Co.*, 81 Atl. 306 (Pa.).

One defense should not be waived by advancing another consistent one. See WILLISTON, SALES, § 495. Thus, a servant's dismissal is justifiable if a valid excuse existed though at the time the master alleged groundless reasons. *Green* v. *Edgar*, 21 Hun (N. Y.) 414; *Boston Deep Sea Fishing and Ice Co.* v. *Ansell*, 39 Ch. D. 339. For the servant cannot show good service or excuse for not serving well. See 19 HARV. L. REV. 63. But a lien is lost if an invalid ground is advanced for non-delivery of the goods. *Boardman* v. *Sill*, 1 Camp. 410, note; *Witt* v. *Dersham*, 146 Mich. 68, 109 N. W. 25. And there can be no objection to a deed as insufficient or an offer to pay as not in legal tender, if refusal is based upon other reasons. *Keller* v. *Fisher*, 7 Ind. 718; *Beatty* v. *Miller*, 94 N. E. 897 (Ind.). If repudiation on an invalid ground justifies the assumption that the tender will be refused though an existing breach be healed, repudiation excuses non-completion. *Lathrop* v. *O'Brien*, 57 Minn. 175, 58 N. W. 987; *Braithwaite* v. *Foreign Hardwood Co.*, [1905] 2 K. B. 543. *Cf. Clegg* v. *Southern Ry. Co.*, 135 N. C. 148, 47 S. E. 667. But if the breach is incurable, repudiation cannot be the cause of the plaintiff's non-performance,

and he has no excuse. Insolvency justifies refusal of credit and an assumption that the contract will not be carried out. *Ex parte Chalmers*, L. R. 8 Ch. 289. Consequently, the evidence in the principal case should be admitted unless the plaintiff shows he would have given notification of his intention and ability to buy for cash, but was misled because the defendant did not base his rescission on insolvency.

CONTRIBUTORY NEGLIGENCE — DIVISION OF DAMAGES BETWEEN NEGLIGENT VESSELS. — An action was brought in a state court for damages caused to the plaintiff's vessel by a collision with the defendant's vessel, due to the negligence of both. *Held*, that the plaintiff may recover one-half of the loss suffered. *St. Louis & Tennessee River Packet Co.* v. *Murray*, 139 S. W. 1078 (Ky.).

Heretofore, if a plaintiff has brought his action in a state court for negligent injury to a vessel by collision, the common-law rule has been applied that if he is negligent he cannot recover. *New York Harbor Towboat Co.* v. *New York, etc. Ry. Co.*, 148 N. Y. 574, 42 N. E. 1086. See *Union Steamship Co.* v. *Nottinghams*, 17 Grat. (Va.) 115, 123. An early Louisiana case stated that if both vessels were at fault the loss should be divided. *Brickell* v. *Frisby*, 2 Rob. (La.) 204. Later cases in that state refuse to apply this rule. *Murphy* v. *Diamond*, 3 La. Ann. 441. Except for the Louisiana case, the principal case is the only instance of an action in a state court where the admiralty rule of damages has been applied. It directly overrules an earlier Kentucky decision. *Broadwell* v. *Swigert*, 7 B. Mon. (Ky.) 39.

CRIMINAL LAW — APPEAL — PRESUMPTION AS TO HARMLESS ERROR. — At the trial of the defendant for perjury a question was submitted to the jury which the court should have decided. The defendant was convicted. *Held*, that to secure a reversal the defendant must show that the error was prejudicial to him. *Coleman* v. *State*, 118 Pac. 594 (Okl.).

Several jurisdictions have the rule that if the error might have prejudiced the rights of the defendant, there must be a reversal. *Boyd* v. *State*, 16 Lea (Tenn.) 149. See *Boren* v. *State*, 32 Tex. Cr. R. 637, 645, 25 S. W. 775, 776. Others hold that if there was error it is presumed prejudicial to the defendant, and unless this presumption is rebutted, a reversal must follow. *Barnett* v. *Commonwealth*, 84 Ky. 449, 1 S. W. 722; *State* v. *Johnson*, 69 Ia. 623, 29 N. W. 754. The principal case holds that a defendant must show the appellate court that the error prejudiced his rights in order to secure a reversal. This rule is the best, and has the support of advanced thinkers on criminal procedure. See 35 REPORTS OF AMERICAN BAR ASSOCIATION, 624 *et seq.* A recent amendment to the Constitution of California, proposed by the legislature, provides that there shall be no reversal in a criminal case unless the court believes the error has resulted in a miscarriage of justice. CAL. STAT. OF 1911, 1798, c. 36.

CRIMINAL LAW — INSANITY — BURDEN OF PROOF. — In a trial for murder the defendant introduced evidence of insanity. *Held*, that the burden is upon the prosecution to prove sanity beyond a reasonable doubt. *Adair* v. *State*, 118 Pac. 416 (Okl.).

The principal case is correct in holding that insanity is a question of responsibility, and not an affirmative defense, the presumption of sanity placing the burden of going forward upon the defendant but not relieving the prosecution of its duty of proving all essential elements of the offense. For the authorities and principles involved, see 4 HARV. L. REV. 45, 55; 11 *id.* 62; 13 *id.* 59; 18 *id.* 312.

DAMAGES — CONSEQUENTIAL DAMAGES — RECOVERY FOR MENTAL ANGUISH CAUSED BY BREACH OF CONTRACT. — The plaintiff bought a ticket for